



COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street Address: 355 Deadmore Street, Abingdon, Virginia 24210

Mailing Address: P.O. Box 1688, Abingdon, Virginia 24212-1688

Fax: (276) 676-4899

www.deq.virginia.gov

Robert G. Burnley
Director

Michael D. Overstreet
Regional Director
(276) 676-4800

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Island Creek Coal Company Registration No. 10704

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301, 1309, 1316 and 10.1 – 1184, between the State Air Pollution Control Board and Island Creek Coal Company, for the purpose of resolving certain violations of State Air Pollution Control Law and Associated Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" or "SWRO" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Island Creek Coal Company" or "Island Creek" means Island Creek Coal Company, a corporation licensed to do business in Virginia, its affiliates, partners, subsidiaries and parents.

9. "Facility" means the VP 8 Garden Creek preparation plant located in Skeggs, 3.2 miles south of Oakwood, on Route 624 in Buchanan County, Virginia and owned by Island Creek Coal Company.

SECTION C: Findings of Facts and Conclusions of Law

1. Island Creek Coal Company owns and operates the Facility.
2. On November 2, 2004, the DEQ-AIR SWRO issued a Prevention of Significant Deterioration (PSD) Permit to Island Creek Coal Company to operate a coal preparation plant with thermal dryer and scrubber (Reg. #10704).
3. Permit condition No. 23 of Island Creek's PSD permit states the following:
Stack Tests – The permittee shall conduct performance tests within one year from the date of this permit and once every two years thereafter and upon request by the DEQ for PM, SO₂, NO₂, CO and VOC from the thermal dryer to demonstrate compliance with the emission limits contained in this permit. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5-50-30, and the test methods and procedures contained in each applicable section or subpart listed in 9 VAC 5-50-410. The details of the tests shall be arranged with the Director, Southwest Regional Office. Two copies of the test results shall be submitted to the Director, Southwest Regional Office within 45 days after test completion and shall conform to the test report format enclosed with this permit. (9 VAC 5-50-30 G)
4. The Company did not conduct the required stack test of the thermal dryer by the one year anniversary date (11-2-05) of the issuance of the PSD permit.
5. The following regulations are applicable to this permitted source: 9 VAC 5-170-160.A – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits."
9 VAC 5-50-30 – (Performance testing) and
9 VAC 5-50-410 Subpart Y – (Designated standards of performance)
6. On November 8, 2005 DEQ sent a Notice of Violation Letter (NOV No. 11-8-05) Certified Mail-Return Receipt Requested, to Island Creek Coal Company. This letter informed Island Creek that DEQ had reason to believe that a violation of Air Pollution Law and Regulations had occurred at the Facility. Specifically, that the required stack testing (by the one year anniversary date of 11-2-05) had not been performed. Island Creek was instructed to contact DEQ staff member Crystal C. Bazyk within 10 days of the date of the NOV letter. Island Creek was asked to submit any corrective action (such as the date of the anticipated stack test) they had instituted or planned to institute. The NOV informed Island Creek that a meeting to discuss resolution of the matter could be arranged, if they so desired. The letter also informed Island Creek that they may be asked to enter into a Consent Order with the Department to formalize their plan and schedule of corrective action and to settle any outstanding issues regarding this matter, including the payment of civil charges.

7. Island Creek representative Gerald Ramsey contacted DEQ's Crystal Bazyk within 10 days to discuss the NOV.
8. Island Creek's Gerald Ramsey submitted a letter to DEQ date November 28, 2005 informing the DEQ that operations at the VP 8 Garden Creek Plant thermal dryer ceased on 11-9-05 and did not anticipate operating the thermal dryer in the future.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1 – 1316 (C), orders Island Creek and Island Creek agrees to pay a civil charge of \$4,080 within 30 days of the effective date of this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

For purposes of properly identifying its payment, Island Creek shall include with the check, a notation of its Registration Number, Federal Identification Number and the fact that payment is being made in accordance with the terms of this Order.

2. If Island Creek reactivates the coal thermal dryer at the VP 8 Garden Creek coal preparation plant, they shall perform the required stack test (Permit Condition # 23) within 30 days of reactivation.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Island Creek for good cause shown by Island Creek, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Island Creek permit dated November 2, 2004.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this Order, Island Creek admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. Island Creek consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Island Creek declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 et seq., and the State Air Pollution Control Law, and

it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.

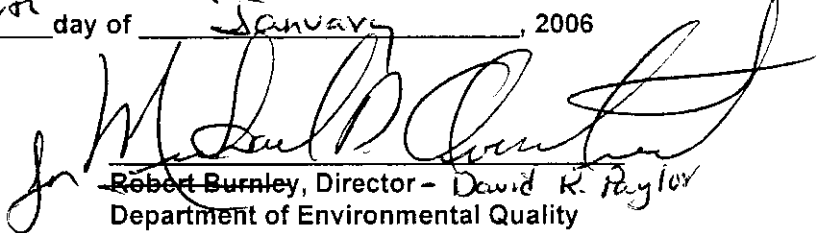
7. Failure by Island Creek to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Island Creek shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Island Creek must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Island Creek shall notify the Director and the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Regional Office within 24 hours of learning of any condition listed above, which Island Creek intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

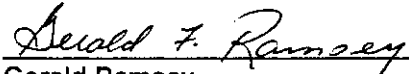
10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Island Creek. Notwithstanding the foregoing, Island Creek agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director of the Board terminates the Order in his or its sole discretion upon 30 days written notice to Island Creek. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Island Creek from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By its signature below, Island Creek voluntarily agrees to the issuance of this Order.

And it is ORDERED this 24th day of January, 2006


~~Robert Burnley~~, Director - David R. Taylor
Department of Environmental Quality

Island Creek Coal Company voluntarily agrees to the issuance of this Order.


Gerald Ramsey
Supervisor Environmental Permitting
Date: 1-18-06

Commonwealth of Virginia

City/County of Buchanan

The foregoing document was signed and acknowledged before me this 18th day of

January, 2006 by Gerald F Ramsey
(Name)

Supv. Environmental Permitting
(title) of Island Creek Coal Company, on behalf of

the Corporation.

Date: 1-18-06


Notary Public

My commission expires: May 31, 2008